

RECEIVED
CENTRAL FAX CENTER

AUG 07 2006

Application No. 09/872,292

REMARKS

This Amendment and the following remarks are intended to fully respond to the Final Office Action mailed January 24, 2006. In that Office Action, claims 1-26 were examined, and all claims were rejected. More specifically, claims 13, 15, and 18 have been objected to under 37 CFR 1.75(c) as being of improper decedent form; claims 1-4, 6, 7, 9-13, 15-21, and 25 have been rejected under 35 U.S.C. §102(b) as being anticipated by Hirsch et al (WO 97/24682); and claims 5, 8, 14, 22-24, and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hirsch et al. in view of Rosse (USPN 6,640,212). Reconsideration of these rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested. Objections and rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested.

In this Response, claims 1, 16, 19 and 25 have been amended; and claims 13, 15, and 18 have been canceled.

Claim Objections – 37 CFR 1.75

Claims 13, 15, and 18 have been objected to under 37 CFR 1.75(c) as being of improper decedent form. Claims 13, 15, and 18 have been canceled without prejudice or disclaimer and Applicants respectfully submit that the amendments overcome this objection. Accordingly, Applicants request withdrawal of this objection.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4, 6, 7, 9-13, 15-21, and 25 have been rejected under 35 U.S.C. §102(b) as being anticipated by Hirsch et al (WO 97/24682) (“Hirsch”). Claims 1, 16, 19 and 25 have been amended and Applicants respectfully submit that the amendments overcome this rejection and add no new matter.

Amended claim 1 recites a method of scheduling a plurality of patients and a plurality of employees in a health care environment, wherein at least two patients receive treatment during a predetermined time period comprising, *inter alia*, “for each patient, evaluating patient care requirements, wherein the patient care requirements correspond to actual employee time

Application No. 09/872,292

requirements necessary to satisfy the patient care requirements and wherein the evaluating patient care requirements include whether such patient care requirements are not needed, temporary or permanent” and “in response to the patient care requirement evaluation, adjusting scheduling time of at least one patient to distribute the corresponding employee time requirements throughout a predetermined time period.”

Amended claim 16 recites a method of scheduling employees in a health care environment comprising, *inter alia*, “automatically evaluating each patient profile and each employee profile and creating an employee schedule based on the evaluation” and “calculating scheduling efficiency information relating to a generated schedule of patients and employees based on the patient profiles and employee profiles.”

Amended claim 19 recites a system for scheduling employees in a health care environment comprising, *inter alia*, “a scheduling module that schedules patients and employees according to patient needs, wherein the scheduling module rounds up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients.”

Amended claim 25 recites graphical user interface for a computer system, the graphical user interface having a display module for displaying information comprising, *inter alia*, “a calculation display area for displaying calculated values within each interval, the calculated values relating to temporary or permanent patient care requirements and employee capabilities for each interval based on the employee’s direct care and indirect care tasks during the time interval, whereby the calculation display area provides efficiency information.”

Hirsch discloses a system which having dedicated management and operational software for the OR suites (including PACU, ICU, etc.) that adaptively and intelligently schedules and optimizes the utilization of the OR suite resources (including resource time, operating rooms, staff, inventory, etc.) and minimizes the costs involved in running the OR suites. (See *Hirsch* page 7, lines 26-30.) The system of *Hirsch* includes an optimization engine conducts a two-phase optimal scheduling. The first phase is a feasibility check which allows for an immediate confirmation that each surgeon’s cases are booked and all relevant preferences are met

Application No. 09/872,292

successfully. The second phase is an optimal global optimization which is activated 48 hours or 72 hours (depending on the hospital's policy) before the day of surgery. The optimal global optimization is done by associating a cost function to every feasible schedule and then trying to find a schedule with minimal cost. The result of the global optimization is a bona fide, mathematically provable optimal schedule(s) according to the chosen criteria of the hospital. At first, the resulting schedules produced drive the staff scheduling and inventory control modules of the system. (See *Hirsch* page 11, line 28 through page 12 line 9.)

In contrast, *Hirsch* fails to disclose evaluating patient care requirements, wherein the patient care requirements correspond to actual employee time requirements necessary to satisfy the patient care requirements and wherein the evaluating patient care requirements include whether such patient care requirements are not needed, temporary or permanent, as recited in claim 1. To the contrary, *Hirsch* fails to address a "not needed" patient care requirement because *Hirsch* optimizes scheduling an operating room where a patient always receives some form of care. In addition, *Hirsch* fails to disclose in response to the patient care requirement evaluation, adjusting scheduling time of at least one patient. To the contrary, any scheduling in *Hirsch* is based on preferences of the hospital and doctors because *Hirsch* merely optimizes a schedule to reduce costs by a hospital in running an operating room and does not use patient care requirements in determining a schedule. Accordingly, independent claim 1 patentably distinguishes the present invention over the cited prior art, and Applicants respectfully request withdrawal of this rejection of Claim 1. Dependent Claims 2-12 and 14 are also allowable at least for the reasons described above regarding Independent Claim 1, and by virtue of their dependency upon independent Claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 2-12 and 14.

Hirsch fails to disclose automatically evaluating each patient profile and each employee profile and creating an employee schedule based on the evaluation" and "calculating scheduling efficiency information relating to a generated schedule of patients and employees based on the patient profiles and employee profiles. To the contrary, *Hirsch* fails to mention automatically evaluating each patient profile and each employee profile, much less creating a schedule based on the evaluation. In addition, as mentioned above with respect to claim 1, any efficiency

Application No. 09/872,292

calculation under *Hirsch* is predicated upon reducing hospital costs for running an operating room and therefore does not calculate scheduling efficiency based upon patient profiles and employee profiles. Accordingly, independent claim 16 patentably distinguishes the present invention over the cited prior art, and Applicants respectfully request withdrawal of this rejection of Claim 16. Dependent Claim 17 is also allowable at least for the reasons described above regarding Independent Claim 16, and by virtue of its dependency upon independent Claim 16. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claim 17.

Hirsch fails to disclose a scheduling module that schedules patients and employees according to patient needs, wherein the scheduling module rounds up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients. To the contrary, as mentioned above with respect to claim 1, *Hirsch* provides scheduling optimization to reduce costs and does not schedule employees according to patient needs. In addition, *Hirsch* in no way mentions rounding up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients. Accordingly, independent claim 19 patentably distinguishes the present invention over the cited prior art, and Applicants respectfully request withdrawal of this rejection of Claim 19. Dependent Claims 20-24 are also allowable at least for the reasons described above regarding Independent Claim 19, and by virtue of their dependency upon independent Claim 19. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 20-24.

Hirsch fails to disclose a calculation display area for displaying calculated values within each interval, the calculated values relating to temporary or permanent patient care requirements and employee capabilities for each interval based on the employee's direct care and indirect care tasks during the time interval, whereby the calculation display area provides efficiency information. To the contrary, *Hirsch* fails to distinguish between an employees activities or task within a time interval, much less display calculated values relating to employee capabilities for each interval based on the employee's direct care and indirect care tasks during the time interval. Accordingly, independent claim 25 patentably distinguishes the present invention over the cited

Application No. 09/872,292

prior art, and Applicants respectfully request withdrawal of this rejection of Claim 25.

Dependent Claim 26 is also allowable at least for the reasons described above regarding

Independent Claim 25, and by virtue of its dependency upon independent Claim 25.

Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claim 26.

Claim Rejections – 35 U.S.C. § 103

Claims 5, 8, 14, 22-24, and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hirsch* in view of *Rosse* (USPN 6,640,212) ("*Rosse*"). Claims 1, 16, 19 and 25 have been amended and Applicants respectfully submit that the amendments overcome this rejection and add no new matter. Claims 5, 8 and 14 depend from claim 1, claims 22-24 depend indirectly from claim 19 and claim 26 depends from claim 25, and are allowable over *Hirsch* for the reasons mentioned above with respect to claims 1, 19 and 25. In addition, the Office Action acknowledges that *Hirsch* fails to disclose, *inter alia*, a patient care capability value that is averaged over an entire shift, or a scheduling module that calculates a comparison value related to patient requirements and employee capabilities for each time interval or displaying a comparison value. In order to overcome the deficiency in *Hirsch*, the Office Action relies on *Rosse*. However, the combination of *Hirsch* and *Rosse* fails to teach or suggest all the recitations of claims 5, 8, 14, 22-24, and 26.

Rosse discloses a standardized information management system for use in long-term residence facilities that continually collects and manages all information related to both the clients and staff of the facility. (See *Rosse* column 2, lines 23-26.) The system of *Rosse* accounts for non-client duties associated with a staff member. (See *Rosse* column 8, lines 11-15.)

Rosse fails to teach or suggest evaluating patient care requirements, wherein the patient care requirements correspond to actual employee time requirements necessary to satisfy the patient care requirements and wherein the evaluating patient care requirements include whether such patient care requirements are not needed, temporary or permanent, as recited in claim 1. To the contrary, *Rosse* merely maintains staff qualifications and availability and does not perform an evaluation as recited in claim 1. (See *Rosse* column 3, lines 1-9.) Accordingly, independent

Application No. 09/872,292

claim 1 patentably distinguishes the present invention over the cited prior art. Dependent Claims 5, 8 and 14 are also allowable at least for the reasons described above regarding Independent Claim 1, and by virtue of their dependency upon independent Claim 1. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 5, 8 and 14.

Rosse fails to teach or suggest a scheduling module that schedules patients and employees according to patient needs, wherein the scheduling module rounds up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients. *Rosse* in no way mentions rounding up an amount of employees scheduled when a determination by the scheduling module results in a fractional number of employees needed to address the needs of the plurality of patients. Accordingly, independent claim 19 patentably distinguishes the present invention over the cited prior art. Dependent Claims 22-24 are also allowable at least for the reasons described above regarding Independent Claim 19, and by virtue of their dependency upon independent Claim 19. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 22-24.

Rosse fails to teach or suggest a calculation display area for displaying calculated values within each interval, the calculated values relating to temporary or permanent patient care requirements and employee capabilities for each interval based on the employee's direct care and indirect care tasks during the time interval, whereby the calculation display area provides efficiency information. To the contrary, *Rosse* fails to distinguish between an employees activities or task within a time interval, much less display calculated values relating to employee capabilities for each interval based on the employee's direct care and indirect care tasks during the time interval. (See *Rosse* column 3, lines 1-9.) Accordingly, independent claim 25 patentably distinguishes the present invention over the cited prior art. Dependent Claim 26 is also allowable at least for the reasons described above regarding Independent Claim 25, and by virtue of its dependency upon independent Claim 25. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claim 26.

Application No. 09/872,292

RECEIVED
CENTRAL FAX CENTER

AUG 07 2006

Conclusion

It is believed that no further fees are due with this Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

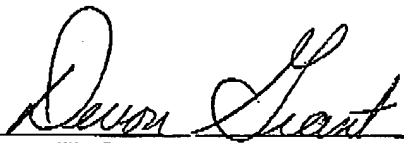
In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
303.357.1648

Date: August 7, 2006




Devon K. Grant
Reg. No. 57,036